

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMMIE JUNIOR CLARK,

Defendant-Appellant.

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UNPUBLISHED

September 13, 2005

No. 252545

Wayne Circuit Court

LC No. 03-004328-01

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of larceny over \$1,000 but less than \$20,000, MCL 750.356(3)(a). The trial court sentenced him as a fourth habitual offender, MCL 769.12, to forty-six months to twenty-five years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his previous acquittal of receiving or concealing stolen property with respect to a Midwest Steel pickup truck bars the instant prosecution for larceny, which was based on his alleged theft of a welder. Whether collateral estoppel and double jeopardy principles bar a subsequent prosecution is an issue of law that this Court reviews de novo. *People v Nutt*, 469 Mich 565, 573; 677 NW2d 1 (2004); *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). "Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined." *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990). Collateral estoppel is "embodied in the Fifth Amendment guarantee against double jeopardy." *Ashe v Swenson*, 397 US 436, 445; 90 S Ct 1189; 25 L Ed 2d 469 (1970). In analyzing whether an issue was "actually litigated" in a prior proceeding, this Court must consider "whether the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issue." *Gates*, *supra* at 156-157. Moreover, an issue is "necessarily determined" in a previous proceeding "only if it is 'essential' to the judgment." *Id.* at 158, quoting 1 Restatement Judgments, 2d, § 27, p 250, comment h, p 258. "The inability of a court to determine upon what basis an acquitting jury reached its verdict, is, by itself, enough to preclude the defense of collateral estoppel." *Id.*

Defendant incorrectly contends that the issue whether he was the person who stole the welder was before the jury in the first trial and resolved in his favor. Contrary to defendant's argument, *Ashe*, *supra* and *Turner v Arkansas*, 407 US 366, 92 S Ct 2096; 32 L Ed 2d 798

(1972), do not control this case, because defendant's acquittal of receiving or concealing the stolen pickup truck did not require a determination that he did not commit the larceny of the welder. Thus, whether defendant was guilty of larceny of the welder was not actually litigated and necessarily determined in the first proceeding.

In the first case, the prosecutor charged defendant with receiving or concealing stolen property worth more than \$1,000 but less than \$20,000, MCL 750.535(3)(a), with respect to the pickup truck. The elements of this offense are: (1) that the pickup truck was stolen, (2) that it had a fair market value over \$1,000 but less than \$20,000, (3) that defendant bought, received, possessed or concealed the truck with knowledge that it was stolen, ~~and~~ (4) the truck was identified as being previously stolen, and (5) defendant had guilty actual or constructive knowledge that the truck was stolen. *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002).

In contrast, in the instant case, the prosecutor charged defendant with larceny over \$1,000 but less than \$20,000, MCL 750.356(3)(a), requiring the prosecutor to show: (1) an actual or constructive taking of the welder, (2) a carrying away or asportation, (3) felonious intent, (4) that the welder must have belonged to another, (5) that the taking must have been without the consent and against the will of the owner, and (6) that it had a fair market value over \$1,000 but less than \$20,000. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). The elements of the two offenses are different, and proof of one offense does not necessarily prove the other. The offenses are unrelated with the only commonality here being that the items were both stolen from the same place. The welder was not relevant to the prosecution involving the pickup truck, and whether defendant was guilty of receiving or concealing the stolen pickup truck had no bearing on whether he stole the welder. Thus, whether defendant committed larceny of the welder was not "actually litigated" in the first action because the prosecutor did not have a full and fair opportunity to litigate the issue. In addition, whether defendant committed larceny of the welder was not "necessarily determined" in the prior proceeding because it was not essential to the judgment in that case. The jury could have acquitted defendant of receiving or concealing the pickup truck without making any finding on any of the elements of larceny of the welder. Because the issue was not "actually litigated" and "necessarily determined" in the first action, collateral estoppel did not bar the second prosecution.

Unlike *Ashe* and *Turner*, the verdict in the first trial was not determinative of the issue in the second trial. In *Ashe*, six men were robbed during a poker game. *Ashe, supra* at 437. Petitioner was charged with and subsequently acquitted of robbing one of the six men. *Id.* at 438-439. He was then charged with robbing another one of the six men. *Id.* at 439. The Court held that the only issue in dispute at the first prosecution was whether petitioner was one of the robbers and because the jury had found he was not, collateral estoppel barred his second prosecution. *Id.* at 445. In *Turner*, the victim was murdered and robbed following a poker game. Petitioner was charged with and subsequently acquitted of the victim's murder. *Turner, supra* at 366-367. Petitioner was then charged with robbery. *Id.* at 367. At the first prosecution, the jury was instructed to find petitioner guilty if he had murdered the victim during the course of a robbery, and the jury received an instruction on the liability of an accomplice who aids and abets a crime. *Id.* at 369. The Court held that the only logical conclusion that the jury could have made in the first prosecution was that petitioner was not present during the robbery and murder and therefore, the second prosecution was barred. *Id.*

Therefore, in *Ashe* and *Turner*, the verdicts in the prior proceedings necessarily dictated the outcome of the second proceedings because the verdicts required a conclusion that the defendants did not commit the subsequently charged offenses. As recognized in *Ashe*, where a previous acquittal is based upon a general verdict, a court must examine the record of the prior proceeding, including the pleadings, evidence, charge, and other relevant information, and conclude whether a rational jury could have based its verdict on an issue other than that which the defendant is seeking to foreclose from consideration. *Ashe, supra* at 444. Defendant contends that he advanced three theories in defense of the first charge: (1) mistaken identity; (2) reasonable doubt as to the value of the truck; and (3) reasonable doubt that {defendant} knew the truck was stolen. The jury could have acquitted defendant based on any of these theories and based its verdict on an issue other than that which defendant sought to foreclose from consideration in the second trial. “The inability of a court to determine upon what basis an acquitting jury reached its verdict, is, by itself, enough to preclude the defense of collateral estoppel.” *Gates, supra* at 158. Further, “[c]ollateral estoppel applies only where the basis of the prior judgment can be ascertained clearly, definitely, and unequivocally.” *Id.* Because the basis of defendant’s acquittal in the first trial cannot be determined, and the instant case involves an issue not actually litigated and necessarily determined in the first trial, defendant’s double jeopardy protections, based on principles of collateral estoppel, did not bar defendant’s larceny prosecution.

Affirmed.

/s/ Brian K. Zahra  
/s/ Hilda R. Gage  
/s/ Christopher M. Murray